

**NORMAN PLANNING COMMISSION  
SPECIAL SESSION MINUTES**

**NOVEMBER 25, 2014**

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Special Session in Council Chambers of the Norman Municipal Complex, 201 West Gray Street, on the 25<sup>th</sup> day of November 2014. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

Chairman Dave Boeck called the meeting to order at 12:00 p.m.

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Item No. 1, being:

**ROLL CALL**

MEMBERS PRESENT

Andy Sherrer  
Roberta Pailes  
Curtis McCarty  
Sandy Bahan  
Dave Boeck  
Jim Gasaway  
Tom Knotts

MEMBERS ABSENT

Chris Lewis  
Cindy Gordon

A quorum was present.

STAFF MEMBERS PRESENT

Susan Connors, Director, Planning &  
Community Development  
Roné Tromble, Recording Secretary  
Jeff Bryant, City Attorney  
Kathryn Walker, Asst. City Attorney  
Larry Knapp, GIS Analyst II  
Terry Floyd, Development Coordinator

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Item No. 2, being:

**O-1415-18 – AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 21-107(B) OF CHAPTER 21 OF THE CODE OF THE CITY OF NORMAN INCREASING WATER LINE CONNECTION CHARGES; REQUIRING REGULAR REVIEW OF CONNECTION FEES; AND PROVIDING FOR THE SEVERABILITY THEREOF.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Water & Sewer Connection Fees Table
3. Annotated Ordinance

*Tom Knotts moved to open the Public Hearing on Ordinance No. O-1415-18. Roberta Pailles seconded the motion. The motion carried by a vote of 7-0 on a show of hands.*

**PRESENTATION BY STAFF:**

1. Kathryn Walker, Assistant City Attorney – I'm here presenting on the ordinance before you today on our connection charges. Ken Komiske, our Utilities Director, is out of town for Thanksgiving, so instead of an engineer you get a lawyer, and I'm sorry about that. I wanted to start with giving you a little bit of background about this ordinance. This is from Section 21-107(b) of our Code. The connection fee is something that's paid when you come in to get a building permit. It is part of a condition of connecting to our water and sewer service, and it must be paid before you can get that service. The Code actually sets forth the total fee, but administratively the fee is split between waste water and water needs on an administrative basis. So the amount of charge varies based on your water meter size. Of course, most of our meters are ¾ inch meters – residential. So that has been the focus of the discussion, although every meter size will see an increase.

The reason we're here today is because there is a statute in Title 62 that requires a public hearing before Planning Commission for any increase or change in development fees. It sets forth the standard by which we have to evaluate the development fees, and I've got that on the screen there. Generally speaking, it's got to be in direct proportion to what the charge is related to. So with connection fees, we're paying for new capacity to our water system. So with every connection, that charge needs to be related to what it costs to get the capacity to serve that customer. So that's how we have come up with this fee. You'll note, in the third bullet, that the connection fee has to be based on actual system improvement costs or reliable, ascertainable and reasonable projected estimates. The estimates must be based on factual and historically realized costs for similar capital improvements. So in coming up with this fee we've looked at our historical costs of new capacity, which is generally water wells.

We recently adopted our Strategic Water Supply Plan that takes care of our water needs through 2016. In that plan it calls for eight to ten new wells to meet both existing and future demand. It is estimated that two to four of those wells, or twenty-five percent of that production, would be attributable to new capacity. So looking at the historical costs of our wells over the past ten years, they've averaged about \$767,000 a well. Of course, there's a lot of variation, as you all know, in drilling wells as far as how deep you need to go, how far you have to pipe it to connect to the system, and things like that. So there is some variability there. The average water production on our new wells is around 192,000 gallons per day. So if you look at the new capacity cost for connection, we looked at the average use per person, which is 102 gallons per capita per day. There's on average 2.5 persons per household. So each well could serve 754 new customers. When you break that down, the connection fee needs to be around \$1,000 to cover that cost. You may have heard, if you followed this, some other numbers out there, and we did present Council with a number of scenarios, but this has been our recommendation from the beginning – this \$1,000 connection fee, because with this statute, we need to make sure that we're basing this on historical costs and figures that we have. For the time being, this is the most accurate data we have that shows this connection fee is needed.

Mr. Boeck – Does this cost include maintenance and upkeep of wells and lines and all that kind of stuff, or is that just initial installation – initial hook-up. Ms. Walker – That's just construction of the well. All of our operation and maintenance fees are covered by the rate payers. So, of course, as we get new connections into the system, they will also be paying rates that cover those costs.

Ms. Walker – Here is the breakdown of those costs. As I said, it's split between water and sewer, but we're really focusing on water with this ordinance. So you can see the increase. Because it is a large increase -- the current water portion of our connection fee is only \$575 -- we are phasing that in with this ordinance so it will go up to \$800 on August 1, 2015 and then again on August 1, 2016 it will go up to \$1,000. Just as of note, not necessarily directly related to the ordinance, but Council is looking at a Resolution tonight, as well, that would require regular review of these fees because, in a couple of years, we will have at least designed and perhaps bid new wells and we'll have new data -- new estimates for costs and so we need to keep an eye on our fees and make sure they're covering our costs, and there are plans to do that. The ordinance also requires that the first review of that would occur no later than November 1, 2016, and at least biennially thereafter. Then, again, there's the resolution that I discussed. We're also including a study of these fees in an RFP for studying our waste water excise tax to ensure that a third party is looking at this and making sure that we're doing what we can to cover our costs.

With that, I'd be happy to answer any questions.

Mr. McCarty – This RFP that you're talking about -- what do we think that's going to cost the City?  
Ms. Walker – We have \$60,000 for that.

#### **AUDIENCE PARTICIPATION:**

1. Steve Ellis, 633 Reed Avenue -- I want to address the proposed fee increase and make one sort of primary point, which is that no one in this discussion is seriously making the claim that the fees being charged here will actually cover the costs of the new construction being anticipated. I'm not saying that that is illegal -- I think the statute is permissive -- it allows you to charge less. But Norman has always had a principle that development should pay its own way. And I've been arguing that these fees are a repudiation of that principle. To sort of make that case, that the historic costs that are being discussed are too low, I think you only have to look at the City staff estimates of what the actual costs will be. So that was discussed a moment ago as basically \$12 million for 7,843 new 3/4-inch equivalent connections, which works out to be \$1,530 per connection. That is what Norman tells you that the cost is likely to be. So two issues there, the first of which is that, in terms of just actually budgeting things in order to make sure that development does pay its own way -- and I'll have a little more to say about that in just a second -- \$1,530 looks like it's the number that you should be getting in the ballpark of, otherwise we're always one fee increase behind the actual costs, so development never pays its own way.

The second point is there's a suggestion that was actually merely implicit in the earlier staff discussion that that somehow is not allowed under the statute being discussed. And I think that's actually misleading. If you pull up the statute or have the City Attorney pull up the statute, I think you'll find that the wording of the issue says that you have to have reasonable cost estimates. Those cost estimates do have to be based on fact -- you can't pull them out of nowhere. But there's also a clause in there that says that there's a relatively low level of scrutiny on that -- it just has to be a reasonable basis for thinking that that is the case. And we've got more than a reasonable basis for that. Not only are the cost figures going forward what the City is budgeting for, they're also the cost figures that are baked into the water rate proposal that is going before the citizens. So if you really think those are just wild guesstimates of what the costs are, then you are saying that the City staff is doing a terrible job on what we're doing. And I would suggest to you that no one has ever walked back the \$2 or \$3 million -- or \$12 million for the 7,800 connections, or one-quarter of that is what's on the development plate -- so that's roughly \$3 million for a little bit under 2 million connections. So that's point number one. We know that the costs are going to be higher than what's being suggested here.

Secondly, I want to make the point that, even if you think that uncertainty is a big issue, it's important to note that uncertainty is a cost, and essentially what you're suggesting is that the City should bear all of the risks of uncertainty, rather than the people who are actually paying the fee, which is not the way the City operates with anyone else. If costs are uncertain, the City budgets and they charge what it will take to make sure that we get the money that we need. That's what I'm suggesting that you guys do.

Finally, if you really think that it's a mistake to make a big jump in fees because of estimated costs, you won't like this proposal either, because the resolution being suggested, which is supposed to go with this, which increased the costs as we learn new things, doesn't allow the costs to raise quickly enough. It makes some sense to say, okay, as soon as we get a new cost, if we can quickly and automatically start to charge that cost, we're basically doing is sort of marginal cost pricing. It's something like, you know, market pricing on a menu for, say, fish or something like that, where the market price is very variable. But that's not what this resolution that the City is proposing will do. It's going to lock us into old prices for new costs and we will always be behind the curve. That sets up a situation where we've either got basically a pyramid scheme where we're depending upon new development to pay old costs, and that can't continue, or when the thing comes tumbling down, the citizens end up paying for the fee. It should be clear to all of you that this particular fee proposal is either just a mistake, in that it in fact doesn't cover the costs being asked to pay for, or that that's the purpose of it, and to vote for this would be to exclusively repudiate the principle that development should pay its own way. I suggest that you don't want to do either of those things. So I think that you should not recommend this to the City this evening. Thank you.

2. Harold Heiple, 218 E. Eufaula, representing the Norman Developers Council – The Norman Developers Council supports the ordinance that's going forward tonight with respect to the connection fees. I repeat the same thing I said in the last City Council public meeting that everyone, including Dr. Ellis, is entitled to his own opinion, but nobody is entitled to his own facts. Somehow he keeps forgetting to point out the City staff study that has been presented, and I assume circulated to you, because I know it's been to the City Council. The Director of Utilities, Kenneth Komiske, when he talks about the 12 wells that are needed and the \$12 million needed for that notes that only 25% of those wells are required for new growth – new development. Those other nine wells have to be drilled and made available for the present and future needs of the current population if we never issue another building permit in Norman. Now this argument that \$1,500 is needed immediately for a connection fee so that development will pay its own way is specious and it's unfounded in fact. I don't know how many times we have to repeat it, but fortunately the City Council is scheduled to vote tonight.

I hope you will recommend approval. Thank you.

3. Sean Rieger, 136 Thompson Drive, representing the Builders Association of Southcentral Oklahoma – I'll be fairly brief. As Harold said, many of the wells that are programmed with this are not even going to serve new construction. As you all are aware, we have lost many active wells over recent years due to arsenic and other contaminants. So many of these wells are programmed to replace existing wells that we lost. They're going to serve existing customers. How you determine what amount of water flow is to the new customer and the old customer and so forth is anyone's guess. So much of this, as Mayor Rosenthal said at the last Council meeting – the rate paying election is all about existing customers and much of the connection fee issue is about existing customers.

I want to go beyond that and let's delve into briefly the philosophy as to what this debate is about. It's about growth. Does growth pay its own way? If you listen to that argument, in their eyes it's a simple elementary school calculation of adding up all the costs and putting them on a building permit, and that's it. It's the end of their debate – they don't go any farther than that. They don't give you any credit – any accounting for the sales taxes that that new customer is going to pay all over town, any credit for the school funding that their child is going to fund into the schools when they become a pupil in the elementary school system and

public school system. They don't give you any credit for the ad valorem taxes that that new family is going to pay. They don't give you any credit for the other fees – many fees – whether they join Junior Jammers or some other function of the City in this town once they're here. They don't give you any credit for the new jobs that it may bring – the new payroll – all of that that comes with it. They don't give you any credit for any of that. They want you to say – add up all the costs that it takes us to tag into that new system and put them on that new customer. Did they pay those costs? Probably not. It's a bit of an elitist argument. It very definitely is a no-growth argument. It's we don't want to pay for any new customer that comes to our town. Period.

Well, what about the other arguments that we've had about storm water? I didn't hear the same advocates bringing up the same philosophy when it came to charging for storm water improvements. If you apply that same philosophy, and when we start talking about improvements to deal with storm water, the new subdivisions on the periphery of town shouldn't pay a dime, because most all of those improvements will be for existing customers. How far do you take that philosophy? How far do we segregate who pays for what in our cohesive community? It's not a healthy argument, frankly. It's not a healthy debate. We are a community, as the Mayor has reminded us. And there are issues that bleed across those lines that we became a community and we stayed a community. This is one of them. It's not an elementary school calculation of adding up costs and putting it on a building permit. I don't know of any community that does that. When you look at the building permit costs around the state, you don't see that. Ours is already massively higher than any other community in the state. Staff put that on the screen recently. You can see it.

So I urge you to consider that this is a fair and valid fee. We've worked very hard on this for the past two or three months to come to this point and we urge you to send it forward tonight with your recommendation. Thank you very much.

4. Jayne Crumpley, 423 Elm Avenue – My comments aren't as eloquent as the previous speakers. I've just heard City staff say that, by their best calculations at this point, a connection fee costs \$1,000. My thing is you're asking the average citizens for us to pay more for water. I think that, if it's \$1,000 that they estimate that that would be a fair thing is to increase the connections fees at this point to the \$1,000 effective the same time as our rate increases will be, or somewhere in that neighborhood, and then do the study to try and determine how do we figure out what a real connection fee is. These have been in existence since 2007. I can't believe that costs have not increased. So I think it's just a matter of fairness. It would make me feel a lot better to vote for my water rate increase if I knew the other side was getting a small increase also. Thank you.

#### **DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

*Jim Gasaway moved to close the public hearing. Andy Sherrer seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Andy Sherrer, Roberta Pailles, Curtis McCarty, Sandy Bahan, Dave Boeck, Jim Gasaway, Tom Knotts
NAYES	None
ABSENT	Chris Lewis, Cindy Gordon

Ms. Tromble announced that the motion to close the public hearing passed by a vote of 7-0.

Mr. Boeck – The reason I asked the question about the long-term costs of maintenance and upkeep – that comes with the vote to increase water and sewer rates to pay for those costs of maintenance and upkeep down the road. So this is just to increase new construction.

Mr. Knotts – So what portion of ad valorem taxes, property taxes – all of those items that were enumerated earlier are available for development of these new wells and new sources?

Ms. Walker – No ad valorem taxes go toward the utility fund construction of new wells.

Mr. Knotts – Property taxes?

Ms. Walker – No.

Mr. Knotts – So even though there's an increase in the City income – would that be right? City income? None of those funds are really for development of new water sources?

Ms. Walker – No. We account for utility revenues separately through an enterprise fund accounting system and so utility revenues, whether they're connection fees or water rates, go to pay for utility improvements. The sales tax does not subsidize these operations.

*Andy Sherrer moved to recommend adoption of Ordinance No. O-1415-18 to City Council. Jim Gasaway seconded the motion.*

Mr. McCarty – I will just say that the City staff has worked on this very hard. I've been involved in some of those conversations. I believe this to be a very fair outcome. Increasing the connection fee, obviously, is nothing that builders and developers want to discuss, but it is something we recognize needs to happen, along with the rate increase that's going to be brought up and voted on sometime early in the year – most likely January. But I'd just like to say thanks to staff and everybody that has worked on this because there has been a lot of discussion about it that's happened and it's been good conversation.

Mr. Knotts – The biennial review after this supposedly is approved – it says no more than two years. I think that's what it said. So that means that it can be triggered earlier than that. What is the trigger? Who calls for an additional review?

Ms. Walker – It doesn't set forth who would call for that in the ordinance itself, but Council has a policy that any three Council members can come forward with a request to get something on an agenda, so it could come forward that way. A lot of their discussion items come forward through their retreat they have annually to determine their priorities. It will come at least every two years, but it could come earlier than that if something changes and they desire to review that.

Mr. McCarty – What happens if this RFP comes back and says we're overcharging?

Ms. Walker – That would give Council something to consider, certainly.

Mr. McCarty – But would that be something due to the new state law that would have to be rectified right away?

Ms. Walker – We would have to look at that. It depends how large the margin was and things like that, but that would certainly be something we would have to study upon receiving those results.

Mr. Knotts – So if the RFP comes back significantly lower than estimated, there would be a review? And so significantly more, there would be a review?

Ms. Walker – That would probably be something that would trigger review before 2016, I would think, because in keeping with that statute, it's got to be a reasonable estimate and it's got to

be in proportion to the costs of the connection to the service. So if we get some data that shows we're grossly overcharging, that's something Council is going to have to work through and likely change.

Mr. Knotts – But also grossly undercharging would be a ...

Ms. Walker – Yeah. Undercharging. Either way, it's got to be reasonable.

Mr. Knotts – So, if I can paraphrase this, there's a mechanism in this process that would rectify a rate that was too high or too low?

Ms. Walker – Yes.

Mr. Knotts – Based on this RFP that you're bringing back in.

Ms. Walker – Right. This statute really came about because some cities and towns across the country were highly overcharging for connections to the service. So this statute really came about sort of as a protection to make sure that you weren't using this fee to pay for other things. You can't say we need this to connect to the service and then turn around and say, well, actually we're going to give the assistant city attorney a raise. It has to be related to that cost to connection.

Mr. Boeck – So there's an automatic audit of that annually? Biennially?

Ms. Walker – The Utilities Director would be required to give an annual report on what our costs are coming in at and what the fees actually are.

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Andy Sherrer, Roberta Pailles, Curtis McCarty, Sandy Bahan, Dave Boeck, Jim Gasaway, Tom Knotts
NAYES	None
ABSENT	Chris Lewis, Cindy Gordon

Ms. Tromble announced that the motion to recommend adoption of Ordinance No. O-1415-18 to City Council, passed by a vote of 7-0.

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Item No. 3, being:

**ADJOURNMENT**

There being no further business, the meeting adjourned at 12:30 p.m.

  
Norman Planning Commission